IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 302 of 2005
And
CRIMINAL REVISION APPLICATION No. 303 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVESH CHANDULAL JOSHI
Versus
THE STATE OF GUJARAT & ANR

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Appearance :
MR DEEPESH C JOSHI for Applicant
MS DS PANDIT APP for Respondent No. 1
MR MB PARIKH for Respondent No. 2

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA
Date : 07/02/2006

COMMON ORAL JUDGMENT

1 Both the Revision Applications have arisen from the same Sessions Case (filed by separate accused of the same Sessions Case) and from the applications preferred by different accused of the same Sessions Case to discharge them, both

Revision Applications were heard together.

2 Learned Advocate Mr. D.C. Joshi for the applicants, learned APP Ms. D.S. Pandit for the respondent No.1 State and learned Advocate Mr.M.B. Parikh for respondent No.2 in both the Revision Applications were heard.

3 In short, present petitioner i.e. original complainant preferred a complaint before the learned Judicial Magistrate, First Class, Savarkundla, alleging that though he was not an agent of Life Insurance Corporation at the relevant juncture, original accused No.1 (not before the court) tried to get policies of bogus persons, depicting the agency of present petitioner and opened a joint account with the State Bank of India, Savarkundla Branch, in the joint name of the petitioner in collusion with original accused No.2 and deposited the amount of commission and that the petitioner never knew about this mischief on the part of accused No.1. Allegations against accused No.3 is, in collusion with accused No.1, he closed the joint bank account which was collusively opened by accused No.1 in the joint name of the petitioner with the collusion of the accused No.2. Investigation was ordered under Section 156(3) of the Cr.P.C. and charge-sheet came to be filed against all the three accused for the offences punishable under Sections 419, 465, 467, 468, 469, 471, 477-A and 114 of the Indian Penal Code.

4 Original accused Nos.2 and 3 i.e. accused No.2 – opponent No.2 in Criminal Misc. Application No. 302 of 2005 and accused No.3 – opponent No.2 in Criminal Misc. Application No. 303 of 2005 separately preferred an application for discharge before the learned Judicial Magistrate, First Class, who rejected both the applications on 26th of September, 2004 and thereupon accused No.2 preferred Criminal Revision Application No.81 of 2004 and accused No.3 preferred Criminal Revision Application No. 82 of 2004 before the court of Sessions at Amreli. Both the Revision Applications came to be allowed by learned Sessions Judge, Amreli, vide his judgment and order dated 31st of March, 2005 and accused Nos. 2 and 3 came to be discharged on the ground that no sanction was obtained under Section 197 of the Criminal Procedure Code as both the accused Nos. 2 and 3 are Bank employees and public servants and hence these two Revision Applications.

5 In the matter of OM WATI (SMT) AND ANOTHER vs. STATE THROUGH DELHI ADMN. AND ANOTHER, as reported in (2001) 4 SCC 333, the Apex Court observed as under in para-8 :

> "8. At the stage of passing the order in terms of Section 227 of the Code, the court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon

consideration, the court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. This Court in ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia,*** cautioned the High Courts to be loath in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is glaring injustice staring the court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial

to proceed."

6 It clearly appears from the above observations that when court decides to discharge the accused, the court is required to record its reasons for doing so. While going through the judgments in both the Revision Applications, it clearly appears that except ingredients of Section 197 and interpretation of the same by the Apex Court, no reasons at all are assigned by the learned Sessions Judge in discharging the accused in both the Criminal Revision Applications nor any material which was before the learned Sessions Judge in the shape of papers under Section 173 are referred to in coming to the conclusion. When in the very decision of Om Wati (supra), the Apex Court has directed that the High Court must be slow in interfering such orders passed by the Trial Court, it becomes the pious duty of the courts below to mention reasons for discharging the accused and if it is not done so, it would be difficult for the High Court to ascertain whether any glaring injustice is caused to any of the parties. Simply because accused is a government employee and therefore sanction is required under Section 197, may not be the only reason to discharge the accused and which is the only reason we find from the judgments and orders in both the Revision Applications. We are in dark as to how the law which is stated by the learned Sessions Judge has been made applicable to the facts of the case with reasons. This Court is not expected to undertake that exercise which is

required to be undertaken as a pious duty by the courts below.

7 In the result, there is no other alternative before this Court except to remand the matters for fresh adjudication with a hope of reasoned order as envisaged by the Apex Court in the matter of OM WATI (SMT) AND ANOTHER vs. STATE THROUGH DELHI ADMN (supra).

8 In view of above, the orders impugned as passed by the learned Sessions Judge, Amreli, on 31st of March, 2005, in Criminal Revision Application No. 81 of 2004 and Criminal Revision Application No. 82 of 2004 are quashed and both the Revision Applications are remanded to learned Sessions Judge, Amreli, for fresh adjudication as above said, after hearing all the concerned parties afresh. In these Revision Applications, no merits of the case are discussed and, therefore, Criminal Revision Application Nos. 81 of 2004 and 82 of 2004 shall be decided afresh on their own merits without being influenced by the orders passed in these Criminal Revision Applications. Rule discharged in both the Criminal Revision Applications.

(J.R.VORA, J.)

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